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No. 93-643

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

BESSEMER & LAKE ERIE RAILROAD COMPANY,
Petitioner,

v.

REPUBLIC STEEL CORPORATION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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RESPONDENTS' TOLEDO WORLD TERMINAL, INC. AND WILLS TRUCKING, INC. BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether antitrust damage claims "based exclusively on conduct unrelated to rates" are barred by the *Keogh* doctrine.

DISCLOSURE STATEMENT PURSUANT TO RULE 29.1

Respondents, Toledo World Terminal, Inc. and Wills Trucking, Inc., are corporate affiliates.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
DISCLOSURE STATEMENT PURSUANT TO RULE 29.1	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
COUNTERSTATEMENT	2
A. Factual Background	2
B. Regulatory Background	4
1. Railroad Commodity Line-Haul Rates vs. Class Rates	5
2. Private Dock-Handling Charges Do Not Fall Within the ICC Rate-Making Jurisdiction	8
a. Railroads could not apply dock-handling charges at Wills respondents' private dock	8
b. Wills respondents' private dock would not be subject to ICC regulation	9
3. Wills Trucking, Inc.	11
C. District Court Proceedings	11
D. The Decision of the Court of Appeals	12
COUNTERARGUMENT	13
I. *KEOGH*	13
II. *ILLINOIS BRICK*	14
CONCLUSION	15

TABLE OF AUTHORITIES

CASES Page

A.F. Pringle & Co. v. Atlantic Coast Line R. Co., 269 I.C.C. 541 (1947) 9
Armour & Co. v. Atchison, T. & S. F. Ry. Co., 291 I.C.C. 223 (1953) 6
Association of P&C Dock Longshoremen v. The Pittsburgh & Conneaut Dock Company, 8 I.C.C. 2d 280; 1992 ICC LEXIS 27 (1992) 10
Brainerd Fruit Co. v. Chicago G. W. R. Co., 163 I.C.C. 585 (1930) 6
Calcium Carbonate Co. v. United States, 256 F. Supp. 99 (S.D. Ill. 1966) 7
Durbin Paper Stock Co. v. ICC, 585 F.2d 543 (D.C. Cir. 1978) 7
Handling Freight Between Ships and Cars at Ports, 253 I.C.C. 371 (1942) 9
Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977), *rehearing denied*, 434 U.S. 881 (1977) 2, 14
Iron Ore Rate Cases, 41 I.C.C. 181 (1916); 44 I.C.C. 368 (1917) 9
Keogh v. Chicago & Northwestern Railway, 260 U.S. 156 (1922) ..... *passim*
Kieronski v. Wyandotte Terminal Railroad Company, 806 F.2d 107 (6th Cir. 1986) 10
Lone Star Steel Company v. McGee, 380 F.2d 640 (5th Cir. 1967) 10
Louisiana & Arkansas Ry. Co. v. Export Drum Co., 359 F.2d 311 (5th Cir. 1966) 7
Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116 (1990) 8
Pinney Dock & Transport Co. v. Penn Central Corp., 838 F.2d 1445 (6th Cir. 1988), *cert. denied*, 488 U.S. 880 (1988) 5, 12-14
United States v. ICC, 352 U.S. 158 (1956) 8
Zenith Dredge Co. v. Northern Pacific Railway Co., 259 I.C.C. 288 (1944), *modified on other grounds*, 268 I.C.C. 59 (1947) 6, 7

STATUTE

49 U.S.C. § 6(1) 7

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-90a) is reported at 998 F.2d 1144. The opinion of the district court on motions for new trial and judgment notwithstanding the verdict (Pet. App. 91a-121a) is reported at 759 F. Supp. 219.

JURISDICTION

The judgment of the court of appeals was entered on May 27, 1993. The petition for rehearing was denied on July 26, 1993. Pet. App. 121a-131a. The petition for a writ of certiorari was filed on October 25, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

COUNTERSTATEMENT

This brief relates to Respondents, Toledo World Terminal, Inc. and its corporate affiliate, Wills Trucking, Inc., (collectively referred to hereafter as "Wills" or "Wills respondents"), involving Case 91-1587 (D.C. Civil No. 84-02010).

Petitioner, Bessemer & Lake Erie Railroad Company ("B&LE"), unambiguously admitted to the court of appeals that "The Wills plaintiffs['] . . . claims were based *exclusively on conduct unrelated to rates,*" (Appellant Br. at 14)[1] (emphasis added), and therefore the Petitioner's questions presented of whether the *Keogh*[2] doctrine applies to "conspiracies involving mixed rate and non-rate activities" and whether *Keogh* is a "bar [to] competitor's rate-based claims," (Pet. 10), are inapplicable to the Wills respondents' case. Also, the Wills respondents are not steel companies, and therefore, the question presented of whether *Illinois Brick*[3] bars certain of the steel companies' claims is equally inapplicable to the Wills respondents' case. Finally, the court of appeals has remanded the Wills case for a new damages trial, and no review of that decision has been requested. Nevertheless, B&LE requests that this Court review all of the nine cases consolidated into the MDL 587, Lower Lake Erie Iron Ore litigation, and therefore, a short response is appropriate.

A. Factual Background

Mr. Paul Wills founded Wills Trucking, Inc. in 1951, and incorporated the predecessor of Toledo World Terminal, Inc. ("Wills' dock") in 1974. C.A. App. 3404.

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[1] This page of B&LE's opening brief to the Third Circuit Court of Appeals is attached hereto as Appendix A.

[2] *Keogh v. Chicago & Northwestern Railway*, 260 U.S. 156 (1922).

[3] *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), *rehearing denied*, 434 U.S. 881 (1977).

While Wills was precluded by the conspiracy from obtaining a dock suitable for handling iron ore and engaging in an iron ore business in Toledo, Ohio, Wills did provide a dock-to-mill service to the steel industry. Wills' dock handled commodities like coal, coke and steel, but not iron ore, for National Steel, Republic Steel and Jones & Laughlin Steel. C.A. App. 3406, 3409. Wills Trucking transported various bulk commodities to 30 steel mills across the Midwest, including the transport of non-ore commodities to Armco, Inc.'s steel mills. C.A. App. 3406-08, 10439.

For an entire decade, the Wills respondents attempted to establish a dock operation to provide Armco, Inc. ("Armco") with a lower cost iron ore service. Armco was keenly aware of its competitive disadvantage as the result of being held captive to the railroads' antiquated dock facilities. In an Armco memorandum dated May 30, 1980, company management described its 15-year quest for a self-unloader dock facility in Toledo, Ohio, describing the railroads' Toledo hulett crane docks as being saddled with "excessively high labor demands," "antiquated methods of transfer" and "lack of storage space," which were quickly making Armco "non-competitive." C.A. App. 8496-99.

While Armco was searching for a self-unloader dock, the Wills respondents were actively attempting to lease/purchase Toledo dock facilities to meet Armco's needs. Wills tried negotiating the lease/purchase of five such railroad dock properties from 1969 to 1978. C.A. App. 10442. The B&LE and its co-conspirators thwarted each of these attempts through concerted refusals to sell or lease dock property [4]—conduct having nothing to do with

[4] B&LE pleads for certiorari, claiming, "There is no evidence implicating Petitioner in any conspiracy to refuse to sell or lease space for private docks." Pet. 14, fn. 9. The jury conclusively found otherwise (C.A. App. 1890, 1900), and B&LE does not, and has not, requested review based on the weight of this evidence. Thus no

the rate tariffs on file with the Interstate Commerce Commission ("ICC"), and therefore, being completely outside the scope of the *Keogh* doctrine.

B. Regulatory Background

Wills' private iron ore dock operations never came into existence because of the railroads' non-rate-related, concerted refusals to sell or lease dock property. The jury verdicts are absolutely clear: Wills was injured through B&LE's participation in the concerted "refusal to lease or sell dock properties or the refusal to lease or sell dock properties without restrictions, to prevent Wills from engaging in an iron ore business at Toledo, Ohio." C.A. App. 1900. B&LE's argument to the court of appeals clearly conceded that the *Keogh* doctrine had no applicability to the Wills respondents, admitting: "The Wills plaintiffs['] . . . claims were based exclusively on conduct unrelated to rates—i.e., the railroads' alleged refusal to sell or lease railroad property for use as dock facilities." Appellant Br. at 14 (Appendix A). B&LE has never recanted its admissions, but has now made generalized statements implying the respondents' claims, including Wills, are rate-related,[5] and thus barred by Keogh. B&LE uses overstated facts and generalities about ICC jurisdiction

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response is needed except to restate the district court's findings that "[l]iterally thousands of documents" establish the illegal conspiracy in which B&LE's participation was nothing short of criminal and was prosecuted as such.

[5] For example:

"Had the court of appeals enforced [*Keogh*] . . . damages in this case would have been zero." Pet. 2.

"The filed tariffs did not provide 'commodity line haul' rates for the carriage of ore from 'private docks' to steel mills." Pet. 4.

"In any event, without a lower rate for transporting the ore to a mill, docks were not economically viable . . ." Pet. 14, fn. 9.

". . . like the dock plaintiffs here, claimed that filed rates caused them injury . . ." Pet. 16-17.

to exaggerate differences between *Pinney Dock*[6] and the decision below. B&LE's strategy falls apart when scrutinized under the actual facts and law underlying the court of appeal's decision. The B&LE's strategy may have changed, but the facts remain the same: Wills' claims are simply not rate-related.

1. *Railroad Commodity Line-Haul Rates vs. Class Rates*

Petitioner, B&LE, first implies this case involves "rates" by charging that "without a lower rate for transporting the ore to a mill, docks were not economically viable," and claiming:

> The rates for transportation were published in tariffs filed with, and regulated by, the ICC. The filed tariffs did not provide "commodity line-haul" rates for the carriage of ore from the "private docks" to steel mills. Instead, the filed tariffs provided "class rates" that applied to those shipments and that were much higher than commodity rates, but were equally subject to plenary ICC regulation.

Pet. 4.

B&LE presents an illusion of rate-relatedness flatly rejected by the jury and both lower courts. In effect, B&LE contends that if it had not engaged in the illegal, non-rate activities—i.e., concerted refusals to sell or lease dock properties, and thus allowing Wills to purchase or lease an iron ore dock, the railroads would have later engaged in collective refusals to extend commodity line-haul rates ("boycotts of unregulated docks"; Pet. App. 34a) and thereby make private dock operations non-competitive. To make this argument B&LE wrongly assumes that private docks did not have the commodity line-haul rate as a matter of right, where the private dock was leasing or purchasing a railroad dock facility having the com-

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[6] *Pinney Dock & Transport Co. v. Penn Central Corp.*, 838 F.2d 1445 (6th Cir. 1988), *cert. denied*, 488 U.S. 880 (1988).

modity line-haul rate in its filed tariff. The conspiracy to prevent the sale or lease of railroad docks was not an exercise of futility. Had private docks become established at the railroads' Lower Lake Erie facilities, the filed commodity line-haul rate would have been applicable to those private docks.

The ore docks which the Wills respondents attempted to lease/purchase had the rail "commodity line-haul" rates, not the "class" rates. The commodity line-haul rate serves *the dock*, as a geographic point.[7] If the conspiracy had failed, Wills' dock would have had the benefit of the commodity line-haul rates because the tariffs specified such rates from those particular geographic points.[8] It makes no difference *who* utilizes the dock—the dock itself receives the rail rate as a matter of law. *See Zenith Dredge Co. v. Northern Pacific Railway Co.*, 259 I.C.C. 288 (1944), *modified on other grounds*, 268 I.CC. 59 (1947).

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[7] For example, Wills attempted to lease the Toledo Lakefront dock. The railroads utilized the following tariffs for rail service at this Toledo dock: New York Central Railroad Company Freight Tariff 1501-G, Penn Central Company Freight Tariffs C-80, C-80-A and C-80-B, and Baltimore & Ohio Railroad Company Freight Tariff 160-F. *Each tariff contained iron ore commodity line-haul rates from "the ore docks of the Lakefront Dock and Railroad Terminal Company at Tolcdo, Ohio"* to Middletown and Hamilton, Ohio, and Ashland, Kentucky, which are sites of Armco steel mills. C.A. App. 10439, 10447-51. The same would be true of Wills' attempt to purchase the Hocking Valley dock property from the Chesapeake and Ohio Railway Company. This dock was served by C&O Freight Tariff 2152-M, and *contained an iron ore commodity line-haul rate applicable "from the ore docks of the Chesapeake & Ohio Railway Company at Toledo Dock, Ohio"* to Middletown and Hamilton, Ohio, and Ashland, Kentucky. C.A. App. 10449.

[8] If the railroads desired to restrict application of the iron ore line-haul rates, they should have so noted specifically in their tariffs. Indeed, the ICC has long held that "[i]f carriers desire to restrict application of certain rates named in their tariffs, they should do so in clear and unequivocal language." *Brainerd Fruit Co. v. Chicago G. W. R. Co.*, 163 I.C.C. 585, 586 (1930). *See also Armour & Co. v. Atchison, T. & S. F. Ry. Co.*, 291 I.C.C. 223, 231 (1953).

In *Zenith Dredge*, the Minnesota-Atlantic Transit Company and the Great Lakes Transit Corporation had cancelled their railroad dock leases, and the ICC ruled that the rail tariff rate from those docks remained available for other shippers. The ICC found that the description in the rail tariff, "Northern Pacific Railway, dock no. 1" and "Northern Pacific Railway, dock no. 6," represented the geographic points from which the rate applied, regardless of whether the party leasing the facility had changed. 259 I.C.C. at 289-290. If the railroads had not abruptly cancelled Wills' lease of the Toledo Lakefront dock on the day before it was to become effective,[9] or had the railroad permitted the lease of the Toledo Hocking Valley dock to go through (C.A. App. 3440), Wills' dock would have had the commodity line-haul rate. The above facts were established, and went absolutely uncontradicted, in pretrial briefs, at trial, and to the court of appeals. *See* Tr. Docket No. 563 at 2-3, C.A. App. 10447-10451; Wills Reply Br. at 1-3, respectively.

To eliminate the application of a commodity line-haul rate, a railroad had to file the new rate with the ICC under 49 U.S.C. § 6(1) (Appendix B), and the public is afforded the opportunity to protest the railroad's action. The railroad, not Wills, would need to initiate the proceeding.[10] B&LE's "class rates" argument raises an ICC jurisdictional issue not applicable under the proven facts.

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[9] *See* C.A. App. 4172-74, 8383, 8387, 8389-90. The railroads cancelled the lease and then continued developing the site to meet Armco's needs. Even today, the railroads continue to serve Armco from the site Wills attempted to lease for this purpose. C.A. App. 8546-61.

[10] Aside from the non-existence of an ICC rate issue, there also is no ICC issue concerning tariff construction. Construction of railroad tariffs is well within the jurisdiction of the Federal courts. *See Louisiana & Arkansas Ry. Co. v. Export Drum Co.*, 359 F.2d 311 (5th Cir. 1966) (Federal court has jurisdiction to construe the meaning of rail tariff term "shipping point.") *See also Durbin Paper Stock Co. v. ICC*, 585 F.2d 543 (D.C. Cir. 1978); *Calcium Carbonate Co. v. United States*, 256 F. Supp. 99 (S.D. Ill. 1966).

2. *Private Dock-Handling Charges Do Not Fall Within the ICC Rate-Making Jurisdiction*

Petitioner, B&LE, makes a second attempt to implicate rate-related activities into their conspiracy, claiming:

> The ICC had regulated both dock-handling rates and commodity line-haul rates for decades prior to the events at issue in this case . . . .
> [Petitioner then concludes that this Court permitted] establishing rates on a basis that favored railroad docks over privately owned, non-railroad docks, and in applying full dock-handling charges to all shippers, even if shippers provided part of the unloading service themselves. *United States v. ICC*, 352 U.S. 158, 173-174 (1956).

Pet. 4-5.

Petitioner appears to allege that the railroads would have been able to apply dock-handling charges even where Wills performed the dock-handling service, and that private docks are subject to ICC regulation. If so, both allegations are false.

a. *Railroads could not apply dock-handling charges at Wills respondents' private dock*

Petitioner's reliance on *U.S. v. ICC*, *supra*, is simply wrong. In *U.S. v. ICC*, the Court interpreted a rail tariff that published a combined commodity line-haul rate and the dock-handling charge as a single rate. ("The railroads assume these [wharfage and handling] charges as a part of the rate.") *Id.* at 160. The government had paid the full commodity line-haul rate, then sought a rebate for the wharfage and handling services it performed. The Court rejected the government's argument, finding that any deviation from the filed rail tariff rate would be a violation of the Interstate Commerce Act. *Id.* at 172. The decision simply followed the well-established, filed-rate doctrine. *See Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116 (1990).

Unlike the rail tariff interpreted by the Court in *U.S. v. ICC*, the commodity line-haul rates here do not include dock-handling charges. Indeed, in the *Iron Ore Rate Cases*, 41 I.C.C. 181 (1916); 44 I.C.C. 368 (1917), the ICC required the railroads serving the Lake Erie iron ore market to separately state dock-handling charges from the line-haul rates in their tariffs. 41 I.C.C. at 221.[11] The rail tariffs applicable to the docks Wills attempted to lease/purchase contained separately stated charges for dock-handling services. *See* C.A. App. 10465-66, 10441, 10446.[12] Where the line-haul rates and dock-handling charges are separate, a railroad cannot apply its dock-handling charges if it is not performing this service. *See A.F. Pringle & Co. v. Atlantic Coast Line R. Co.*, 269 I.C.C. 541, 546 (1947); *Handling Freight Between Ships and Cars at Ports*, 253 I.C.C. 371 (1942).

b. *Wills respondents' private dock would not be subject to ICC regulation*

Finally, contrary to the implication left by the B&LE, the dock-handling charges applicable to Wills' private dock was not, and could not have been, subject to ICC regulation. The Interstate Commerce Act grants the ICC jurisdiction over rail common carriers. Dock companies that conduct rail operations, under the common control of, or pursuant to a contract with, a rail common carrier, and, hold their dock services out to the public at large in

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[11] Petitioner's own tariffs were changed to comply with this requirement. In Petitioner's 1917 iron ore tariff, line-haul rates and dock-handling charges were published together. C.A. App. 6419, 6420. Petitioner's iron ore tariff in effect from 1958 separately published line-haul rates and dock-handling charges. C.A. App. 6588.

[12] For example, the Chesapeake & Ohio Railway Company's Hocking Valley dock at Toledo, Ohio, Tariff 2152-M, Item 130, and Supplements thereto, and after May 1979, Tariff CO 4980, Item 200, and Supplements thereto, clearly designate separate commodity line-haul rates and handling charges. This issue is not in dispute, as the separate rate structures are described in Petitioner's opening brief to the court of appeals. Appellate Br. at 7-8.

combination with the rail common carrier, are also subject to rail common carrier status. *Association of P&C Dock Longshoremen v. The Pittsburgh & Conneaut Dock Company,* 8 I.C.C.2d 280; 1992 ICC LEXIS 27 (1992); *Lone Star Steel Company v. McGee,* 380 F.2d 640 (5th Cir. 1967); *Kieronski v. Wyandotte Terminal Railroad Co.,* 806 F.2d 107 (6th Cir. 1986). In *P&C Dock,* the ICC held:

> Our jurisdiction over rail carriers is limited to common carriers. What distinguishes common from private rail carriage is public access—'the right of the public to use the roads' facilities and to demand services of it.' *Lone Star,* 380 F.2d at 648 (additional citations omitted) . . . thus, the operations of private rail carriers or private contract carriers fall outside the Commission's jurisdiction.

1992 ICC LEXIS at *27.

The ICC found *P&C Dock* a rail common carrier, stating:

> It is not disputed that B&LE publicly offered P&C dock's rail-lake vessel loading and unloading services at Conneaut as part of its complete common carrier rail transportation service, compensated through B&LE's publicly filed tariff.

Id., at *29.

Under the criteria set out in *P&C Dock,* and its analysis of cases cited therein, Wills' dock unquestionably would not have been a rail common carrier. Wills' dock was not under common control with a rail common carrier and had no contract for serving the railroads' customers. Moreover, Wills' dock operations were not accessible for the public "to demand services of it." *Id.* As specifically found by the court of appeals, "Armco's business was the sole evidence of property injury to Wills. Thus, Wills' claims were tied to its ability to serve a specific customer . . ." Pet. App. 82a. The record below is absolutely clear on this point. Wills' proposed ore dock was

not held out to the public, rather it had one purpose—to serve one customer, Armco. C.A. App. 10444, 10452, 3456-78. The court of appeals properly found the private docks were "unregulated entities." Pet. App. 34a. If B&LE is arguing that railroad handling charges are applied at private docks or that the ICC regulated private docks, then its claims are simply not supportable under the law as applied to the facts of the case.

Consequently, B&LE's position that it eventually could have thwarted competition from Wills even if its non-rate-related conspiracy had failed is simply inconsistent with the evidence introduced, and not contested, at trial. The Wills respondents were indisputedly capable of offering a lower cost dock-to-mill service than any complete dock-to-mill service provided by the railroads. C.A. App. 10465-67. The conspiracy prevented Wills from acquiring a dock in Toledo to serve Armco, and if the conspiracy had failed, no ICC decision was necessary before Wills could compete for Armco's ore traffic.

3. Wills Trucking, Inc.

B&LE ignores the fact that Wills had the capability of trucking Armco's ore from the dock. If Armco required, Wills had the authorities (C.A. App. 3464-69, 6436, 10444, 7152-53, 6649-50, 7710-12, 7716-31, 7888-7906, 7794-7824), and the rates (C.A. App. 7475-79) to move Armco's ore.

C. District Court Proceedings

Without recognition of the many varied claims and burdens applicable to the many respondents in the nine consolidated cases, B&LE claims: "The case was tried largely on proof of two elements, i.e., that the railroads conspired to maintain high class rates for 'private docks' and to maintain high rates for dock handling to discourage the use of self-unloading vessels." Pet. 6. This statement ignores the facts alleged, and proved, in Wills' exclusively non-rate-related case.

The Wills respondents' Amended Complaint alleged antitrust damage caused by Defendants "concertedly refusing to permit Plaintiffs and others by lease, sale or other means to establish or operate private docking facilities on land owned or controlled by Defendants." C.A. App. 443 at ¶ 16b. Wills' claims were tried to the jury on proof of the railroads' concerted refusals to lease or sell dock property unrestricted to the handling of iron ore. C.A. App. 10442 and 3437-60. The district court thoroughly charged the jury on the Plaintiffs' burden in establishing a concerted refusal to sell or lease dock properties. C.A. App. 4963-64, 4969-71, 4979, 4988, 4995-97. The jury thereafter rendered a special verdict finding injury to Wills' dock company caused solely through "the refusal to lease or sell dock properties or the refusal to lease or sell dock properties without restrictions, to prevent Wills from engaging in an iron ore business at Toledo, Ohio." C.A. App. 1900. This injury, resulting from the refusal to sell or lease dock properties, is "outside the scope of the *Keogh* doctrine." *Pinney Dock,* 838 F.2d at 1457.

D. The Decision of the Court of Appeals

B&LE theorizes, "Had the Court of Appeals enforced these [*Keogh*] limitations, as [did] the Sixth Circuit in . . . *Pinney Dock* . . . the damages in this case would have been zero." Pet. 2. To the contrary, *Pinney Dock* expressly held that the *Keogh* doctrine has no applicability to the "refus[al] to permit [plaintiff] to purchase, lease or use dock facilities which could have accommodated the technologically advanced self-unloading vessels . . ." 838 F.2d at 1457. Therefore, the decision below is entirely consistent with *Pinney Dock.* The court of appeals below stated:

> It is fully consistent with *Keogh,* however, to accept these rates as lawful and nonetheless to conclude that through non-rate activities, *particularly the restriction on the sale or lease of dock space and the refusal to deal with potential competitors,* the railroads ef-

> fectively retarded entry of lower cost competitors to the market . . . [adding] We have definite evidence of the railroads' refusal to handle self-unloaders at their docks, restrictions on the *sale and lease of dock property* to unregulated entities, boycotts of unregulated docks. [sic] and intra-industry coercion claims which *mirror* those deemed by the court of appeals in *Pinney Dock* to escape *Keogh*.

Pet. App. 32a, 34a (emphasis added).

There is no conflict: the concerted refusal to sell or lease dock properties constitutes non-rate activities outside the scope of the *Keogh* doctrine.

COUNTERARGUMENT

I. *KEOGH*

The jury conclusively determined that the cause of Wills' injuries were the result of Petitioner's "refusal to lease or sell dock properties without restrictions . . ." C.A. App. 1900. Petitioner admitted to the court of appeals, "The Wills plaintiffs . . . claims were based exclusively on conduct unrelated to rates—i.e., the railroads' alleged refusal to sell or lease railroad property for use as dock facilities," thus making *Keogh* wholly inapplicable. Appellant Br. at 14 (Appendix A).

B&LE places very heavy emphasis on the Sixth Circuit's decision in *Pinney Dock*, repeatedly claiming that "striking conflicts" exist between the Third Circuit's opinion here and the Sixth Circuit's *Pinney Dock* decision. *See* Pet. 2, 6, 8, 9, 11, 14-15, 16-17. In reality, the decisions are uniform in many respects, including those relating to the key element of Wills' claims. In *Pinney Dock*, the Sixth Circuit acknowledged that:

> [A]t least some of the plaintiffs' claims for antitrust damages appear to be outside the scope of the *Keogh* doctrine. [One plaintiff] contends that the defendants refused to permit [that plaintiff] to purchase, lease

> or use dock facilities which could have accommodated the technologically advanced self-unloading vessels . . . . These allegations are plainly not related to the defendants' handling charges or to the commodity line-haul rate applied from [the dock] and, to that extent, *Keogh* would not bar antitrust claims based on such allegations.

838 F.2d at 1457.

Pinney Dock properly characterizes refusals to sell or lease dock properties as being non-rate-related. Thus, there is simply no conflict in the circuit courts concerning the inapplicability of *Keogh* to the Wills respondents' claims.[13]

II. *ILLINOIS BRICK*

Petitioner, B&LE, does not address its *Illinois Brick* argument to the dock or trucking company cases, instead, limiting its argument to actions of certain steel companies (Pet. App. 22-24), and therefore, Wills respondents do not respond to this argument.

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[13] Petitioner asks this Court to also consider whether *Keogh* should be applied to "bar competitors' rate-based claims . . ." Pet. 10. Petitioner cites only the *Pinney Dock* decision for its conclusion that "the lower courts remain badly divided over whether *Keogh* applies to competitor claims." Pet. 17. By contrast, the Second, Third, Eighth and Ninth Circuits have long held *Keogh* inapplicable to competitor claims. Pet. App. 36a. Nevertheless, this issue also presupposes rate-based activity simply not present here.

CONCLUSION

B&LE's Petition for Certiorari seeking review of Case 91-1587 (D.C. Civil No. 84-02010) involving Respondents, Toledo World Terminal, Inc. and its corporate affiliate, Wills Trucking, Inc., should be denied, as their claims were clearly based on conduct unrelated to rates, as the Petitioner has unconditionally admitted before the court of appeals.

Respectfully submitted,

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APPENDICES

APPENDIX A

Excerpt from Page 14 Brief of Appellant in the United States Court of Appeals for the Third Circuit Dated November 4, 1991

trebling) to eight of the nine plaintiffs as to which liability had been found for damages they allegedly sustained between 1968 and 1983. The damages jury awarded only nominal damages ($1 each) to the Wills plaintiffs, the only prevailing plaintiffs whose claims were based exclusively on conduct unrelated to rates—*i.e.*, the railroads' alleged refusal to sell or lease railroad property for use as dock facilities. By far, the largest damages ($603.3 Million) were awarded to the steel company plaintiffs, almost 70% of which were based on claims for so-called lost "lake-freight savings"—*i.e.*, savings the steel companies claimed they would have realized in their dealings with vessel companies but for the railroads' conspiracy.

APPENDIX B

49 U.S.C. § 6(1)

Section 6. Schedules and statements of rates, etc., joint rail and water transportation.—(1) Schedule of rates, fares, and charges; filing and posting.—Every common carrier subject to the provisions of this chapter shall file with the commission created by this chapter and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have ben established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facili-

ties defined in this chapter. (Feb. 4, 1887, c. 104, sec. 6, 24 Stat. 380; Mar. 2, 1889, c. 382, sec. 1, 25 Stat. 855; June 29, 1906, c. 3591, sec. 2, 34 Stat. 586; Feb. 28, 1920, c. 91, sec. 409, 41 Stat. 483.)